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Milk in the New England Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1001

[Docket No. AO-14-A58]

Milk in the New England Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This final decision provides changes in the New England milk order based on industry proposals considered at a public hearing in September 1980. The principal change increases the total amount of transportation allowance on milk moved from country locations to city plants in order to reflect more nearly the actual costs of transportation. Related changes lower the zone 21, or base zone, Class I price and restructure some of the pricing zones in southern New England. Other changes permit the use of storage tanks at a non-pricing reload point, allow Class I classification of ending inventories of fluid milk products, and increase the level of allowable diversions of producer milk to nonpool plants. Changes also are made in the procedure for applying location adjustments to shipments from supply plants. The changes are necessary to reflect current marketing conditions and to assure orderly marketing in the New England area.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250 (202/447-6273).

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291. Prior documents in this proceeding: Notice of Hearing: Issued August 11, 1980; published August 14, 1980 (45 FR 54066). Recommended Decision: Issued August 28, 1981; published September 2, 1981 (46 FR 43980).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the New England marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900) at Framingham, Massachusetts, on September 9–11, 1980. Notice of such hearing was issued on August 11, 1980 (45 FR 54066).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Acting Administrator on August 28, 1981, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Index of Changes

1. Under the heading "Plant location adjustment"—a sentence in paragraph 3 is revised, two new paragraphs are inserted after paragraph 19, and one new paragraph is inserted after paragraph 22.

2. Under the heading "Revision of the base zone Class I price level"—two new paragraphs are inserted after paragraph 5 and two new paragraphs are added at the end.

3. Under the heading "Diversion of producers milk"—four new paragraphs are added at the end.

The material issues on the record of the hearing relate to:

1. Plant location adjustments.

(a) Revision of the base zone Class I price level.

(b) Automatic change in location adjustments.

2. Transportation credit on milk moved between pool plants.

(a) Set-aside allowance.

(b) Classification of inventories.

3. Plant definition.

4. Diversion of producer milk.

5. Butterfat accounting.

6. Proposals not supported.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Plant location adjustment.*

The total transportation allowance for milk moved from country plant locations to city plants should be increased to reflect the full costs of reloading and hauling milk. The allowance for variable costs of hauling should be increased from the present 1.8 cents to 2.5 cents per hundredweight for every 10-mile zone that milk is moved between zone 21 and zone 1. Between zones 14 and 15, the fixed hauling cost allowance should be changed from 8 cents to 12 cents per hundredweight, and the provision for reload costs increased from 6 cents to 10 cents per hundredweight. The combined effect of these changes will be to increase the Class I and blended price adjustment at zone 1 from the present 50 cents to 72 cents per hundredweight over the zone 21 prices. At locations beyond zone 21, Class I and blended prices should be adjusted downward by 2.5 cents per hundredweight per 10 miles rather than at the present rate of 1.5 cents.

Under the present terms of the order, milk from producers is priced at the location of the plant at which it is first received. The same plant location adjustment rates apply to Class I and producer blended prices. Prices are adjusted from 201–210 mile base zone (zone 21), which is measured from Boston. The Class I milk price is increased 1.8 cents for each 10-mile zone less distant than the twenty-first zone and reduced 1.5 cents for each 10-mile zone more distant than zone 21. In addition to the transportation adjustments associates with distance, a 14-cent differential (8 cents per hundredweight for fixed costs of hauling and 6 cents per hundredweight for the cost of reloading milk from supply plants) between zones 14 and 15 is applicable to milk received at plants in zones 1–14.

A federation of cooperative and a milk dealers' association submitted nearly identical proposals to change the location adjustment schedule in the New England order. A variable hauling rate allowance of 2.3 cent per hundredweight per 10-mile zone, and allowances of 12 cents per hundredweight for fixed hauling costs and 10 cents per hundredweight for costs of reloading milk, were requested. However, both groups proposed maintaining the present 1.8-cent per hundredweight per zone price differences within the first 8 zones where most of the distributing plants are located. A price difference of 5.8 cents, rather than 1.8 cents, would then occur between zones 8 and 9 to absorb the amount of hauling costs at the 2.3-cent rate per zone for the first 8 zones that would not be reflected in the 1.8-cent rate for those zones. Originally, cooperatives proposed that prices for zones beyond zone 25 be at the zone 25 level and not be adjusted downward any farther, while the milk dealers proposed that price adjustments beyond zone 25 be at the same rate as within the first 25 zones. During the hearing, however, both groups reversed their

positions on this issue, each adopting the other's proposal.

These proposals to increase price differentials between zones are designed to include within the order transportation allowances that adequately provide for the cost of hauling bulk milk. Proponent witnesses testified to the necessity of reflecting the full cost of hauling in the location adjustment schedule in order to achieve equity between handlers who buy milk from different sources and between producers who sell milk priced at different locations.

Handlers who buy milk directly from producers and cooperatives pay for it at the price applicable at their plant locations, with the producers or cooperatives paying any hauling costs incurred in delivering the milk to that location. Transportation costs on milk purchased from supply plants and assigned to Class I, however, are presently credited to the selling handler by charging him the Class I price effective at his location while he collects the higher Class I price effective at the location of the buying handler in payment for his milk. When the price difference between the two locations is not great enough to defray the expenses of hauling milk from one to the other, either the buyer or seller must make up the difference. A buying handler who pays for the transportation of his milk supply will experience a cost disadvantage in competition with a distributing plant operator who purchases milk directly from producers. If a cooperative-operated supply plant subsidizes transportation costs not covered under the order, reduced proceeds from the sale of milk must be reblended in lower prices to member producers, creating inequity between them and non-member producers and encouraging them to leave the cooperative.

Inadequate adjustment of prices by location results in producer inequity when producers deliver milk to handlers at different locations. A producer delivering milk to a city distributing plant receives a price which is too low to recover the cost of hauling milk there, while a producer whose milk is received at a country manufacturing plant is paid a price which is too high in relation to the plant's distance from the city market. Dairy farmers whose milk is direct-delivered to the city are then at a competitive disadvantage to those whose milk is received at nearby country plants.

If the order is to fulfill its purpose of providing stable and orderly marketing conditions for producers and for the handlers through whom they market their milk, it is necessary that transportation allowances contained in the order do not fall too far short of the full costs of hauling bulk milk. A regression analysis of transportation costs for July 1980 which clearly demonstrates the inadequacy of present transportation allowances was introduced by a witness for the proponent cooperatives. The hauling rates negotiated with milk haulers by cooperatives on 47 different routes, each covering 50–250 miles between supply plants or reload points and city plants, were analyzed. This cost analysis shows that the fixed cost of hauling bulk milk in July 1980 was 12.12 cents per hundredweight, with a variable cost of 2.55 cents per hundredweight per 10-mile zone. A cooperative representative further testified that in a survey of cooperative association managers an average cost of reloading milk at supply plants of 10 cents per hundredweight was determined.

In a February 1978 hearing concerning location pricing, a similar regression analysis for August 1977 was introduced showing a variable hauling rate of 1.99 cents per hundredweight per 10-mile zone. At that time, the rate proposed for inclusion in the transportation allowance was 1.8 cents, which rate was adopted in the final decision issued in September 1978. Witnesses in the current proceeding testified that the 1.8-cent rate was obsolete before it was adopted, and as hauling costs have increased steadily since that time the transportation allowance has become increasingly insufficient.

It is apparent from the evidence presented that the transportation allowance in the New England order should be updated. However, adoption of the proposed rate of 2.3 cents per hundredweight per 10-mile zone would seem to invite the same problems encountered after the most recent proceeding dealing with this issue. Incorporation of a variable hauling allowance of 2.3 cents per hundredweight per 10-mile zone when the actual cost just prior to the hearing was 2.55 cents would ensure that the amended order would be out of date before it could be adopted. Accordingly, the 2.55 cents variable cost rounded to 2.5 cents per hundredweight per 10-mile zone should become part of the order's amended location adjustment provision.

As requested by proponents and supported by testimony, allowances of 12 cents per hundredweight for fixed hauling costs and 10 cents per hundredweight for costs of reloading milk should be incorporated in the location adjustment schedule. The fixed hauling cost allowance is supported by the regression analysis, and the reload cost by the only testimony offered on that subject. No evidence or testimony was presented to dispute either rate. As in the present location adjustment schedule, allowances for fixed hauling and reload costs should be inserted between zones 14 and 15. There are no pool distributing plants outside zone 14, and most supply plants and reload points are located in zone 15 and beyond. Insertion of these allowances between zones 14 and 15 will avoid disrupting competitive relationships between distributing plants. The addition of these allowances, totalling 22 cents per hundredweight, will cover the cost of moving milk from the production area to the primary consumption centers and line up the cost of nearby direct-shipped milk with that of more distant reloaded and supply plant milk.

In the proponents' proposed location adjustment schedule the present 1.8-cent per hundredweight price relationship between zones is retained through zone 8, with a 5.8-cent differential between zones 8 and 9. Proponent witnesses justified retaining the 1.8-cent price difference within the interior zones on the basis that nearly all of the distributing plants are located in these zones and that increased price differences there would disrupt competition. The change from the previous nearby plant zone, within which most of the plants in the present zones 1–8 were subject to the same price, had been in effect for only two years, they maintained, and handlers need more time to adjust to the present price differences before changes are made.

Several proprietary handlers objected to aspects of the proposed location adjustment schedule that they felt would disadvantage their operations relative to those of other handlers. A distributing plant operator located in zone 7, in competition with a zone 12 handler, asserted that the proposed schedule, with a price break between zones 8 and 9, would increase the present 9-cent price difference between zones 7 and 12 to 14.5 cents. This price difference, he claimed, would reflect more than the actual variable cost of hauling milk a distance of 5 zones, and would advantage his competitor unfairly. A zone 1 handler repeated the zone 7 handler's concern over the state of competition with a zone 12 handler if price relationships in zones 1–8 were to be frozen with more rapidly declining prices outside zone 8.

Establishing different price adjustments between zones 1–8 than

between zones outside zone 8, with the proposed price break between zones 8 and 9, would disrupt competitive equity between plant operators located in zones 1–8 and those located beyond zone 8. Location adjustments exist for the purpose of getting milk from where it is produced to where it is needed for processing and packaging. Hauling costs have not been shown to be any less in zones 1–8 than in other zones. Accordingly, the 2.5-cent per hundredweight rate should be used to adjust prices between zones 1 through 8. There is, however, a basis for restructuring the zoning within the old nearby plant zone.

At the time of the last hearing on this subject, a shift in the primary production area from Vermont to New York was observable. More milk was moving from west to east, while north to south movements were declining as a proportion of market production. It was determined, therefore, that the zoning of the secondary consumption areas west of Boston and Providence should be computed on the basis of the distances of Hartford and Springfield from the nearer of Boston or Providence. Since it is 70 miles from Providence to Hartford, and 77 miles from Providence to Springfield, the Hartford area was designated zone 7, and the Springfield area zone 8. Since the last hearing, however, the trend of production for the New England market has been northward. The percentage of production from Vermont farms in December 1979 was 39.3%, compared to 37.8% in December 1977. New York production pooled in Order 1 over the same period changed from 27.9% to 27.0% of total pool milk. At the same time, an examination of New York milk production pooled in New England, by county, shows a shift from southeast and east central counties to counties in northeast New York.

In New England, milk movements from northwest to southeast and north to south rather than from west to east result in diminishing the difference in distances between the major production area and the primary and secondary consumption areas. Hartford, Springfield and Worcester remain significantly closer to any primary production area than Boston or Providence, and should be in lower-priced zones to encourage milk to move on into the primary consumption area. However, price zone differences should be reduced between the Hartford, Springfield, and Worcester areas and zone 1 to make these secondary consumption centers more competitive in the procurement of milk from the north and northwest portions of the production area for the market. This would require an average decrease of approximately 20 miles, or 2 zones, in the relative distances from the principal production areas to Hartford/Springfield/Worcester and from those production areas to Boston/Providence.

The area presently designated as zone 1 should be unchanged. All plants located in the State of Rhode Island, the Massachusetts counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth, or Suffolk, or the area between Boston and Massachusetts highway number 128 are in zone 1. This zone includes the major cities of Boston and Providence and is generally described as southeastern New England. The Class I price at the 21st (base) zone,

Plants located in that portion of Middlesex County, Massachusetts, south of Massachusetts highway 2 and not in zone 1 and the Worcester County townships of Berlin, Blackstone, Bolton, Douglas, Hopedale, Mendon, Milford, Millville, Northborough, Northbridge, Southborough, Sutton, Upton, Uxbridge, Westborough, and that portion of Harvard township south of Massachusetts highway number 2 should be in zone 2. The Class I price in this zone would be 2.5 cents less than that in zone 1, and 69.5 cents more than the zone 21 Class I price.

All plants located in the eastern Connecticut counties of Middlesex (except the townships of Cromwell, Durham, Haddam, Middlefield, Middletown, and Portland), New London, Tolland (except the townships of Ellington and Somers), and Windham; or in the Worcester County, Massachusetts, townships of Auburn, Boylston, Charlton, Clinton, Dudley, Grafton, Holden, Lancaster, Leicester, Millbury, Oxford, Paxton, Shrewsbury, Southbridge, Sterling, Webster, West Boylston, and Worcester City should be in zone 3. The Class I price there would be 5 cents less than the zone 1 price and 67 cents more than the Class I price at the 21st zone.

The designation of the present zone 7 (western Connecticut) should be changed to zone 5. This area consists of the Connecticut counties of Fairfield, Hartford, Litchfield, New Haven; the townships of Cromwell, Durham, Haddam, Middlefield, Middletown and Portland in Middlesex County; and the townships of Ellington and Somers in Tolland County. In addition, the Massachusetts townships of Brimfield, Holland, Monson, Palmer and Wales in Hampden County; the township of Ware in Hampshire County; and the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge and West Brookfield in Worcester County should be included in zone 5. In this zone, which includes the city of Hartford, the Class I price would be 10 cents less than in zone 1, and 62 cents greater than the Class I price in zone 21.

In exceptions to the recommended decision, a proprietary handler located at Danbury, Connecticut, objected to the inclusion of its location in the same zone as Hartford. Rather than "lumping the entire State of Connecticut into one zone" as the handler claims, however, the recommended decision merely changed the designation of an already specified portion of western Connecticut from zone 7 to zone 5. Plants within that zone are subject to equal Class I prices, as they have been since 1978. A further concern of the Danbury handler is his competitive relationship with plants in the Springfield, Massachusetts, area. The price relationship between the two locations was changed by the recommended decision only by the amount of increase in the variable hauling allowance over one zone (0.7 cents per hundredweight).

The handler's assertion that his plant location is nearer than Hartford to the milk supply in western Connecticut and southeastern New York is valid. However, his conclusion that Danbury should therefore be subject to a lower price adjustment for location than Hartford is unsound. The price structure of the market must be based on the relative proximity of major consumption areas to the areas of heaviest milk production. Danbury is no closer than Hartford to the important New England production areas of Vermont and northeastern New York.

The area presently designated zone 8, which includes the city of Springfield, should be changed to zone 6. This zone consists of the Massachusetts counties of Hampden (except the townships of Brimfield, Holland, Monson, Palmer, and Wales) and Hampshire (except the township of Ware). At plants located in this area, the Class I price would be 12.5 cents less than at plants in zone 1, and 59.5 cents greater than for locations in zone 21.

The zone location of any plant located outside the specific zones previously listed should be determined on the basis of its highway mileage from Boston. In general, this area encompasses the territory north and west of the zones specified. Since plants located outside the specified zones are generally on a direct line between the major production and consumption areas, they should be zoned on a straight mileage basis.

Restructuring the present designated zones in Connecticut and Massachusetts was not the specific method proposed by proponents. However, this rezoning would result in very little change in price relationships among pool distributing plants, as requested by the proponents. The Class I price difference between zone 1 and the Springfield area would change from 12.6 cents to 12.5 cents. From zone 1 to the Worcester area, Class I prices would be reduced by 5 cents rather than by 5.4 cents. The Class I differential at Hartford would be 10 cents less than at zone 1, as compared to the present 10.8-cent difference. The rezoning adopted in this decision will also incorporate the actual variable hauling rate throughout all zones, avoiding the sharp price difference between zones 8 and 9 which several handlers testified would hurt them competitively. At the same time, the revised zone structure more accurately reflects the relative distances of the primary and secondary consumption areas from the primary sources of production.

In its exceptions to the recommended decision the Danbury handler objected to rezoning plant locations as being beyond both the scope of the notice of hearing and evidence presented at the hearing. The handler claims that as a result, parties who would be affected adversely by such rezoning were not in attendance and were unable to present evidence on this issue. The objective of changing price adjustments by location was, however, clearly expressed in the notice of hearing, and was emphasized in testimony received during the hearing. The continuance of existing price relationships within the area where most of the distributing plants are located was also included in the hearing notice, and the importance of not disrupting those relationships was stressed in evidence presented. Because price relationships between plants in the marketing area were preserved in the decision essentially as they existed prior to the hearing, the effect of rezoning on intramarket competition between handlers should not be adverse for any handler. The effect of rezoning on the price relationship between handlers in Connecticut is no different than if the proposals to amend transportation differentials contained in the hearing notice had been adopted as proposed.

A handler located in Franklin, Massachusetts, objected to the present designation of that location as zone 1, claiming that it is closer to the production areas of Vermont than Boston is, and that zone 4 (with a 5.4-cent lower Class I price) is less than 10 miles away from the plant location: He requested that a zone 3 designation for this location be considered, which would lower his present Class I price by 3.6 cents.

There is no justification for placing this handler in a lower-priced zone. Franklin, Massachusetts, is approximately the same distance from points in Vermont as Boston is, and is midway between Boston and Providence, the two population centers of zone 1. Furthermore, it is located more than 20 highway miles from any of the nearest zone 4 competitors in the Worcester area.

Another zone 1 handler located north of Boston expressed a desire to see location differentials updated to reflect the full cost of moving raw milk from the farm to the city, but also requested that the old nearby plant zone be reinstated so that all handlers in southern New England might compete on the basis of the same Class I price. This witness maintained that it is difficult for handlers located in zone 1 to compete in further-out zones with handlers who are subject to lower Class I prices. Furthermore, he claimed, by adjusting prices within the nearby plant zone government contributes to urban decay by encouraging industry to move out of the central city area where costs are higher.

This witness overlooks the principle behind location adjustments, which is to ensure that milk will be moved to where it is needed. Zone differentials cannot reflect the cost of moving milk to the city if no differentiation is to be made between cities which are varying distances from production areas. If the location adjustments reflect the cost of moving milk only to the periphery of the consumption area, the allowance would not be adequate for hauling milk into Boston. At the same time, if the cost of moving milk to Boston were incorporated into a Class I price that applies throughout the entire nearby plant zone, the expense of hauling milk to Springfield or Hartford would be overcompensated, attracting unneeded supplies of milk to those cities. As transportation costs and allowances increase, the inequity of either of these situations would become more pronounced.

It is not likely, as the handler contends, that the present pricing concept would encourage handlers to move their distributing plant operations to outlying areas. Handlers who move out of the central city in order to obtain lower raw product prices would incur higher costs in moving packaged milk to the city that would more than offset the lower costs for raw milk.

A handler whose plant is located in Rhode Island expressed a need for increased hauling allowances to cover the extra cost of moving milk from northern Vermont, past Boston, to Rhode Island without having to pay a Class I price greater than that in Boston. In a post-hearing brief filed by this handler, it was suggsted that the extra cost be covered by a 7-cent pool credit allowed on Class I supply plant milk shipped to Rhode Island and southeastern Massachusetts. The transportation credit allowed handlers regulated under the New York-New Jersey milk order (Order 2) was used as a justification for the proposed 7-cent credit.

The transportation credit in the New York-New Jersey order exists because of farm point pricing. It covers part of the handler's cost of getting milk from the farm to the plant of first receipt. The handler credit is not applied to the entire pool but only to the proceeds due producers whose milk is moved in bulk form.

In New England, where milk is priced at the plant of first receipt, producers pay the hauling costs associated with moving their milk to a plant. If southeastern New England is significantly farther from the production area than Boston is, the price of milk to the handler should be enough to cover the additional cost of hauling. However, there was no testimony supporting a higher price in southeastern New England than in Boston. In testimony received at the hearing, the Rhode Island handler stated that the cost of hauling milk to his plant from zone 25 in northern Vermont was 21 cents more than the present transportation allowance in the order. This decision adopts an increase in the transportation allowance from zone 25 to zone 1 of 26 cents, from 56 cents to 82 cents. This increase would more than cover the handler's current shortfall in transportation allowance.

As advocated by producer groups, reduction of Class I and producer prices by zone should continue beyond zone 21 at a rate reflecting the full cost of hauling (2.5 cents/cwt/zone). Witnesses opposed maintaining the present "kink" in the rate of adjustment beyond zone 21. They maintained that no reduction in hauling costs outside zone 21 was indicated in the analysis of hauling costs. Furthermore, milk is customarily hauled from as far as zone 25 to zone 1, and the transportation allowance on that milk should cover the full cost of hauling over that distance. Several

witnesses testified that zoning, and adjustment of prices, should cease for locations farther out than zone 24 or zone 25. They expressed the opinion that the cessation of zoning for farther-out locations would discourage the "leap-frogging" of distant producers over closer-in producers since the hauling costs from the distant areas would not be fully covered. The record, however, does not reveal that this is happening to any significant extent. Moreover, in the absence of zoning, handlers would be able to pool farther-out producers at manufacturing plants beyond zone 25 at the zone price, thereby diluting the pool and the blend price for all closer-in producers. Accordingly, adjustment of Class I and blend prices by zone should continue downward beyond zone 21 at the same variable rate as prices for the inner zones.

(a) *Revision of the base zone Class I price level.* The 22-cent increase in location adjustments between zone 21 and zone 1 should not be applied as a full 22-cent increase in Class I prices at zone 1. Instead, the Class I price at zone 21 should be reduced 14 cents, resulting in an 8-cent increase at zone 1. At the present time, the Class I price differential at zone 21, which is added to the basic formula price for the second preceding month, is $2.42. With transportation allowances, the Class I differential at zone 1 is $2.92.

The milk dealers' association proposed that with an 18-cent increase in location differentials, the Class I differential at zone 21 should be reduced 12 cents to avoid the full 18-cent increase in the zone 1 Class I price. Under this proposal, the zone 1 Class I price differential would be increased 6 cents, or to $2.98. The dealers testified that any greater price increase would seriously disrupt intermarket competition with handlers regulated under Order 2, and would increase the total returns to producers. They expressed the belief that although producer prices need to be realigned, a significant net increase in producer prices under current supply-demand conditions would encourage even greater milk production in a market with declining Class I sales.

Producer groups opposed reducing the Class I price differential at any zone. One representative of a cooperative association asserted that increased costs of hauling should be passed through marketing channels to consumers, not absorbed by producers. Another witness pointed out that the handlers' proposed price reduction at zone 21 would have a net price reduction outside zone 14 where one-third of the producer milk and 10 percent of Class I milk in New England is priced. In view of the increases in cost of production indices of 20 to 25 percent since 1978, to which he testified, this witness expressed the opinion that no producer prices should be reduced. Also, two cooperative representatives testified that the historical price difference between Order 1 and Order 2 at the 21st zone has been 17–18 cents. Justification of that difference based on the relative differences in distance of the two markets from Eau Claire, Wisconsin, was cited from a 1968 decision. On that basis, one witness claimed, the Order 1 price should not only be maintained at 17 cents over the Order 2 price, but the difference should be increased to 24 cents.

The addition of the full 22-cent transportation increase at zone 1, with the rezoning adopted herein for southern New England, would result in a weighted average Class I price increase for the market of 20 cents and an increase in the blend price to producers of about 11 cents. In the face of increased production and declining Class I use, there is no economic basis for enhancing producer returns. Under the price support program, higher production costs (not including hauling costs) result in increased prices paid by the Commodity Credit Corporation for manufactured dairy products. Changes in support prices are then reflected in order prices for both Class II and Class I milk through the Minnesota-Wisconsin price series for manufacturing grade milk. There is, therefore, no reason to reflect in the location pricing structure of the order those increased production costs represented by the indices introduced in testimony.

The cooperatives' proposal to add to the Class I prices in the first 8 zones all of the increase in the cost of hauling milk from zone 21 to zone 1 implies that all of the milk needed for Class I use at all locations in the old nearby plant zone must be moved from distant areas. This is not the case. Much of the milk received by distributing plants in southern New England comes from farms relatively close to these plants. An analysis of the market administrator's statistics describing where milk is produced, by county, shows that production from within the States of Connecticut, Massachusetts, and Rhode Island, the southernmost counties of Vermont and New Hampshire, and the southern counties of New York is of great enough volume to satisfy about two-thirds of the Class I needs of the New England marketing area. Under the current supply arrangements in this market, increasing the zone 1 Class I price by 8 cents and reducing the Class I price at other zones at the rate of 2.5 cents per zone would result in approximately the same total return to producers as a group. The 14-cent reduction in the zone 21 Class I differential that would result would reflect the relative decline due to increased hauling costs in the value of milk produced and delivered in the country compared to that of milk produced and delivered closer to city locations.

A federation of cooperatives objected to the 14-cent reduction in the Class I price at zone 21 on the basis that consumers should bear part of the burden of increased transportation costs. The new location adjustment structure results in Class I prices outside zone 12 being reduced from the previous level while prices inside zone 12 will be increased for any given location by approximately 8 cents. Since nearly all of the producer milk assigned to Class I is priced in the first 12 zones, as is two-thirds of the total producer milk pooled, part of the increased transportation allowance will be reflected in prices to handlers and accure to producers to help offset increased hauling costs.

In a comment filed with the hearing clerk, a producer from Vermont expressed the opinion that the price level of milk should be maintained at least at the current level of 80 percent of parity. The implication of his remarks is that the recommended Class I price reduction at zone 21 would result in an inadequate return for the hard work of farmers who supply the nation with food. The present supply-demand situation, however, does not justify any significant enhancement in returns to milk producers through a higher Class I differential.

Although the zone 21 Class I price difference between Order 1 and Order 2 has historically been 17–18 cents, the intermarket price relationship at that zone has become less important over time with the growth of direct delivery of producer milk to city locations. Much more milk is priced at city locations now than in 1968. Since 1968, location pricing in both orders has evolved with the object to encouraging milk to move where it is needed for fluid use. Location adjustments were revised most recently for New England in 1978, and for New York-New Jersey in 1977. Since those revisions, the Class I price difference between New York City and Boston has been 16 cents (New York City: $2.25 Class I differential at 201–210 mile zone plus 36-cent location adjustment plus 15-

cent direct delivery differential equals $2.76; Boston: $2.42 Class I differential at 201–210 mile zone plus 50-cent location adjustment equals $2.92). Under a recent decision on proposed pricing changes for Order 2 that were considered at a June 1980 hearing, the Class I price differential effective at New York City would be $2.84, compared to a differential price of $3.00 at Boston under the changes adopted herein.[1] The difference in prices effective at the two cities, therefore, would remain at 16 cents.

An increase in the present Class I price in the lower-numbered zones by the amount of the added transportation allowance would result in a misalignment of prices with Order 2, increasing the incentive for Order 2 handlers to distribute milk in Order 1. Both dealer and cooperative association witnesses, even those protesting the proposed reduction of zone 21 Class I prices, stressed the importance of price alignment between Order 1 and Order 2. Several witnesses also commented on the need to consider the results of the June 1980 Order 2 hearing. The problem of interorder alignment occurs because the procurement and sales areas of both orders overlap. The importance of interorder alignment has recently become greater as some trade barriers established by health department regulations have been removed. According to one witness, three New York handlers are now licensed to sell milk in Massachusetts.

Several areas were mentioned in testimony as being of primary concern in an examination of interorder price alignment. None of the testimony received, however, indicated that price relationships presently existing between Order 1 and 2 in these areas present any alignment problems. Interorder price alignment probably would remain fairly satisfactory, therefore, if price relationships in these areas remain relatively unaltered.

An Order 1 handler in Danbury, Connecticut, with sales in the Order 2 areas competes with handlers in the New York metropolitan area. If this handler were to adjust his sales volume between the two markets to become pooled under Order 2, he would still maintain sales in the Order 1 area in competition with Order 1 handlers. In these circumstances, orderly marketing would be maintained in this handler's sales area if the Class I price level at Danbury were the same, or nearly so, under both orders. Danbury is presently in Zone 7 of Order 1 and in the 41–50 mile zone of Order 2. The Order 1 price at Danbury is presently 12.4 cents higher than the Order 2 price. Under the revised Order 1 zone structure, Danbury would be in zone 5, while remaining in the 41–50 mile zone in Order 2. Under the changes adopted in this decision and the very recent Order 2 decision regarding the location adjustment schedules for both orders, the Order 1 price at Danbury would be 14.8 cents higher than the Order 2 price. If full hauling cost were incorporated into the Order 1 location adjustment schedule without adjusting the zone 21 Class I differential downward, however, the price difference between the two orders at Danbury would increase to 28.8 cents. A price discrepancy of that size might encourage the Danbury handler to adjust sales so as to be pooled in Order 2 at a lower price, while still competing with Order 1 handlers in New England.

Handlers located in southwestern New England should not be subject to Class I prices that make them unable to compete with Albany, New York, area handlers selling milk in the Hartford, Connecticut, or Springfield, Massachusetts, areas. The importance of alignment between these points has increased with the licensing of several New York handlers to sell milk in Massachusetts. The Class I price differences between Albany and Hartford and Albany and Springfield effective during the period preceding the most recent amendment proceedings for the two markets have been 43.6 and 41.8 cents, respectively. Albany is in the 131–140 mile zone in Order 2. The recent decision for Order 2 establishes a Class I price differential of $2.404 at that location. As a result of the changes adopted herein, the Class I price differential at Hartford would be $2.90, and at Springfield, $2.875, thus widening the price differences between these locations and Albany to 49.6 and 47.1 cents, respectively.

Order 1 Class I prices in southwestern New England should not be so high as to exceed significantly the Order 2 Class I price at Albany plus the cost of hauling packaged milk from there to Hartford or Springfield. Misalignment problems could result if Albany handlers were able to transport packaged milk to Hartford and Springfield at a Class I price differential cost that is below the Order 1 Class I price differential cost to handlers in those areas. In the earlier Order 1 decision on this subject, the cost of hauling packaged milk from Albany to Hartford, 102 miles away, was determined to be 42.6 cents per hundredweight. On the basis of the same formula, using a Purdue University study of 1978 packaged milk transportation costs, the cost of hauling packaged milk 82 miles to Springfield from Albany was 36.2 cents. Because 1976 transportation costs are obsolete, that formula should be updated. Using the rate of change experienced in bulk milk hauling costs since 1977, as determined from the regression analysis of those costs submitted by proponents, fixed hauling costs have risen 29% and variable costs 28%. A rate of increase of thirty percent can, therefore, be employed to estimate the change in packaged milk transportation costs since 1976. As a result, hauling costs of about 55 cents from Albany to Hartford and about 47 cents from Albany to Springfield may be calculated.

The Class I differential cost to an Albany handler for packaged milk moved to the Hartford area would then become $2.404 + .55, or $2.954, compared to the Hartford area handler's Order 1 Class I price differential of $2.90. An Albany handler would experience no advantage in transporting fluid packaged milk to Springfield, either, at a differential cost of $2.404 + .47, or $2.874, which would be the same as a Springfield handler's Order 1 differential cost for Class I milk. If the cooperatives' proposal were adopted, however, and no downward adjustment at zone 21 were made to partially offset the increase in transportation allowances, Class I price differentials at Hartford and Springfield would become $3.04 and $3.015, respectively, giving Albany area handlers a potential competitive advantage of more than 8 cents at Hartford and 14 cents at Springfield.

The Danbury, Connecticut, handler also took exception to the consideration of proposed changes in Order 2 in discussing intermarket alignment between Order 1 plants and Order 2 plants competing in southeastern New York and southwestern New England. He claimed that amendments to Order 2 were not known at the September 1980 Order 1 hearing which was held several months after the Order 2 hearing, and that handlers therefore had no opportunity to testify with respect to the effect of those changes on their competitive situation. However, the amendments to Order 2 which became effective September 1, 1981, were included as proposals in the hearing notice for the June 1980 Order 2 hearing. Order 1 handlers had adequate opportunity to be advised of those proposals and of the effect they would have on proposed pricing relationships between Order 1 and Order 2.

[1] Official notice is taken of the Assistant Secretary's decision on proposed amendments to the New York-New Jersey order that was issued on June 22, 1981 (46 FR 33008).

The same handler objected to the effect of the recommended decision on his competitive relationships with plants in Fultonville and Albany, New York. Although those New York plants are subject to lower Class I prices than those to be effective at Danbury, they are located farther from Danbury than from Hartford and therefore would be less competitive at Danbury than they would be at Hartford, as discussed above. These plants are also significantly farther than Danbury from the areas in southeastern New York in which the Danbury handler competes with them, and would incur greater costs in hauling packaged milk there. As mentioned earlier in this decision, the purpose of location pricing is to encourage bulk milk to move where it is needed for bottling, and not to enhance the competitive position of handlers who would then distribute packaged milk back into the lower-priced areas.

(b) *Automatic change in location adjustments.* Proposals to revise location adjustment rates automatically through the use of a formula, so that transportation allowances will follow transportation costs as represented by fuel prices, should not be adopted. Identical proposals were submitted by a federation of cooperatives and by an association of milk dealers to adjust zone price differentials for every 5-cent change in the price of a gallon of "Diesel to commercial customers, New England" as reported monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. The proposed adjustment of .05 cents per hundredweight per zone was derived mathematically from the effect a 5-cent change in fuel prices has on the cost of hauling 100 pounds of milk 10 miles. Price differences between the first 8 zones, however, would be kept constant by using the 1-cent adjustment that would be computed for Zone 1 (.05x20 zones =1 cent) for each of the first 8 zones. Prices in Zones 9–20 would be adjusted upward by .05 cents per zone for each 5-cent increase in diesel fuel prices. The Zone 21 price would remain unchanged, whatever the fluctuations in fuel prices, with prices in Zones 22 and beyond being adjusted downward for each 5-cent increase in the price of diesel fuel.

A provision for automatically updating location adjustments by formula has become necessary, proponents testified, primarily because of increasing fuel costs, which had more than doubled between December 1978 and the time of the hearing. Increases in costs of other items affecting hauling were summarized over a period of three years preceding the hearing. Rates of increase for these costs, including equipment, labor, and tires, ranged from 32.5 percent to 45.6 percent. In the face of rapidly rising transportation costs, both cooperative association and dealer witnesses expressed a desire to see the order incorporate a means of updating transportation allowances automatically without going through the time-consuming hearing procedure.

The formula proposed is designed to adjust transportation allowances only according to changes in fuel prices, and only for the proportionate impact of fuel prices on total hauling costs. It was emphasized by more than one witness that the proposed automatic adjustment is not "indexing" in the sense that total hauling costs would be recovered through location adjustments with no incentive for handlers or haulers to minimize those costs. Instead, the fuel prices used in the formula would be prices reported as determined by market forces. Competition in a milk hauling industry described as presently "highly competitive" by a consultant with the University of Vermont studying milk hauling in Vermont would serve to keep costs, and rates, at a minimum. By basing the adjustment formula solely on fuel price changes, witnesses testified, less than one-third of the total hauling costs would be included in the formula. The formula, therefore, should result in transportation allowance adjustments that are conservative in relation to actual cost increases.

Witnesses testified that a large cooperative in New England and one in the Order 2 market rely on fuel formulas to adjust automatically rates paid to contract haulers, thereby avoiding contract re-negotiations as hauling rates increase. The importance of adjusting rates for every 5-cent increase in fuel prices, rather than waiting for 10-cent increments, was stressed in order that transportation allowances stay current with price increases. Adjustments at 5-cent increments under the proposed formula would result in ½-mill rate adjustments, which some handlers claimed would be difficult to incorporate into already existing data processing systems. Other witnesses maintained that such changes would not be burdensome when compared to the problems resulting from inadequate location adjustments.

An exhibit was introduced which tracked the operation of the proposed formula as if it had been in effect since December 1978. The base location adjustment rate per zone with which this exhibit began was the 1.8-cent rate adopted in December 1978 which, according to testimony, was obsolete when adopted. Application of the proposed formula yielded an adjusted 2.25-cent rate for August 1980, which is comparable with the proposed 2.3-cent transportation allowance rate requested by proponents.

Using the actual variable 1.99-cent rate determined by regression analysis for August 1977 as a base rate for December 1978 and applying the proposed formula, an adjusted rate of 2.45 cents per zone would result for August 1980. This rate is more nearly comparable with the 2.55-cent variable cost rate determined for July 1980 by regression analysis than is the 2.25-cent rate computed from a base of 1.8 cents. If a base rate reflecting actual variable hauling costs is selected, therefore, adjustments computed by use of the proposed formula would appear to follow closely actual variations in hauling costs over the period August 1977 through July 1980.

The concept of adjusting transportation allowances automatically appears to have merit. Use of the hearing process to adjust relative prices according to location is time-consuming. In a period when the cost of hauling is increasing rapidly, transportation costs effective at the time a hearing is held are often out of date by the time a decision is issued and a revised adjustment rate is adopted. The formula proposed for use in keeping transportation allowances current would, on the basis of the exhibit simulating its operation, result in adjustments to those allowances which would differ little from actual changes in hauling costs as determined by regression analysis. However, the proposed application of the formula adjustor would result in automatically increasing Class I and producer prices with no opportunity for review of such increases. Price misalignment, both within the market and with other markets, would be likely to ensue.

The proposed application of adjustments determined by formula would increase prices at zone 1 through zone 8 locations by the amount of adjustment computed for transportation over a full 200 miles, even though two-thirds of the milk received at city locations for fluid use moves a much shorter distance. With automatic revisions of location adjustments, no control could be exercised over the effect of those revisions on Class I differentials in the interior zones. The greatest impact of the proposed rate adjustments would be in the first 8 zones where over ninety percent of Class I and two-thirds of producer milk is priced. Such an application would

have a potentially great price-increasing effect with no opportunity for reviewing the desirability of increased prices. Automatically increasing prices which would be effective to Order 1 handlers competing with handlers regulated under Order 2 would very likely have a deleterious effect on interorder price alignment. With a 50-cent diesel fuel price increase, prices to handlers competitive with those in Order 2 would increase 10 cents, putting them at a serious competitive disadvantage.

As proposed in the fuel formula adjustor, the 1-cent increase computed for zone 1 for each 5-cent increase in the price of diesel fuel would also be applied to the location adjustments for zone 2–8 in order to maintain the present price relationships between those zones. A proponent witness asserted that the inclusion of the formula adjustor in the order would be important to maintain realigned prices within the market. If zoning within the old "nearby plant zone", however, is to reflect the relative distances of the principal consumption areas from the primary production areas, the rate adjustments for location between those zones should also change, or at least be reviewed, whenever transportation allowances are adjusted to reflect changes in hauling costs. Other witnesses expressed a valid concern that the proposed application of the formula would widen the present and proposed price differences between zones 8 and 9, giving handlers located outside zone 8 a growing competitive advantage over handlers in the lower-numbered zones. A steadily growing price difference at that location would have no economic justification.

The idea of revising location adjustment rates automatically on the basis of a formula using some measure of hauling costs is not intrinsically unacceptable, but several problems with the proposed application of such a formula would have to be overcome. First, Class I price increases for all zones less distant than the 201–210 mile zone would enhance producer returns by more than the additional amount needed to cover increased hauling costs, since on the average milk need not be moved as much as 200 miles to meet Class I needs of the market. The record gives only limited information about which zone would be representative of that distance, but shows clearly that the 201–210 mile zone is not. Second, in the absence of any evidence that variable hauling costs for moving milk to some zones differ from the costs of moving milk to other zones, revisions of location adjustment rates should be applied uniformly to all zones in order to maintain intraorder price alignment. This, maintenance of interorder price alignment should be considered in the application of any formula to adjust location pricing. Fourth, a formula that purports to respond to less than one-third of the costs association with the transportation of bulk milk would not be likely to keep pace with changes in those costs over any extended period of time. Finally, although the prospect of further cost savings resulting from advanced technology or procedures was dismissed by one witness as improbable, factors of that nature are difficult to predict. Any provision for adjusting transportation allowance rates automatically by formula could not be formulated in a satisfactory manner on the basis of the evidence adduced at the hearing.

2. *Transportation credit on milk moved between pool plants.* Proposals to modify the classification of inventories, and to increase the level of "set-asides" in assigning a handler's receipts to his utilization, are designed to effect more uniform costs to handlers between milk received at distributing plants from country supply plants and milk received directly from producers and cooperative associations, and to reduce the reclassification of supply plant milk, both at pool time and on subsequent audits. The basic problems toward which these proposals are directed can be solved more directly by changing the provisions for classifying and assigning receipts of supply plant milk so as to account for it as Class I, unless Class II use is requested by both handlers; and by using a different "set-aside" provision to determine the amount of supply plant milk on which transportation credit will be allowed. To make supply plant milk more competitive with direct-deliver milk, and to allow for unavoidable Class II use, a set-aside provision that permits transportation credit on transfers of plant milk of up to 110 percent of skim milk in Class I and 150 percent of butterfat in Class I after subtraction of direct receipts should be included in the computation of location adjustment credits. A proposal to expand the definition of Class I inventory should be modified to allow handlers to claim Class I classification of inventory held for fluid use in months with abnormally large inventories.

(a) *Set-aside allowance.* Under the present provisions of the order, milk received at a pool plant from other pool plants is assigned to the receiving plant's Class I utilization only after direct receipts of producer milk and cooperative association bulk tank milk have been assigned. An amount of direct receipts equal to 6 percent of skim milk and 25 percent of butterfat in the plant's Class I route disposition is assigned, or set aside, to Class II before the remainder of direct receipts and receipts from pool plants are assigned. The intent of the Class II set-aside is to allow for unavoidable Class II use at pool distributing plants and increase the Class I assignment of receipts from other pool plants so that transportation allowances would be realized. The unavoidable uses on which the present set-aside percentages are based are cream from standardization, shrinkage and route returns.

A cooperative federation proposed increasing the set-aside allowance to 10 percent of skim milk in Class I while leaving butterfat at 25 percent. A dealers' association proposed increasing the skim milk set-aside to 15 percent and the butterfat allowance to 50 percent. Representatives of both producer and dealer groups testified that the present level of set-aside is not adequate to cover "unavoidable" Class II use at pool distributing plants. Unavoidable uses were described by both groups as Class II products which are necessarily associated with a Class I handler, in addition to those uses which are presently included in the set-aside.

Cream, sour cream, milk shake mix and yogurt were mentioned as Class II products which should be processed by a handler who wishes to maintain a full line of dairy products for consumers. It was stated by one witness that because the production and packaging of these items often use the same tanks, pasteurizers, and fillers that are needed for processing fluid milk products, such products may be produced more efficiently at the city plant than in a country location where capital is needlessly duplicated. In addition, because items such as cream and yogurt are not condensed in processing and are more costly to haul as packaged finished products than as bulk milk they may, when transportation is considered, be processed more economically in a city plant.

The result of these proposals would be to increase the amount of supply plant milk to which transportation allowances are applied by increasing the amount of such milk which is assigned to Class I at a distributing plant. Supply plant operators currently ship milk to the city assuming that it will be used in Class I and that it will be covered by the transportation allowance. If supply plant milk is not assigned to Class I, it is reclassified to

Class II and thus no transportation allowance is reflected under the order. Frequently, upon receipt of handler reports and on subsequent audits of the purchasing handlers, supply plant milk is reclassified by the market administrator in applying the assignment provisions of the order.

The reclassification part of this problem can be remedied by classifying and assigning all transfers between pool plants as Class I unless both handlers request that they be Class II. The selling handler should be obligated to the pool for the Class I price at the location to which the milk is delivered. The buying handler would purchase it at that price and then be credited with a transportation allowance on the amount of supply plant milk needed for Class I use and unavoidable Class II use as determined according to a revised set-aside provision. Under this arrangement, the transportation allowance would be at the rate determined by the difference between the Class I prices applicable at the selling and buying handlers' plant locations. In this way, a distributing plant operator has an incentive to purchase from a supply plant no more milk than is needed for Class I use plus unavoidable Class II use unless he is willing to pay transportation costs on supply plant milk not included in the transportation credit.

Transportation allowances are to be applied only to milk transferred from more distant plants to distributing plants which is needed to meet Class I and unavoidable Class II uses. Milk used in manufactured products is processed and reduced in volume more economically in the country before being transported to the city than it is when moved in bulk form to be processed at a city plant. The "pool" covers the cost of moving supply plant milk to the city at the expense of all pooled producers, since the application of location adjustments to supply plant milk reduces the handler's pool obligation, the total value of the pool, and the blended price to producers. Alternatively, milk moved directly to city plants from producers' farms moves at the expense of those producers. Dairy farmers whose milk is moved long distances at substantial expense to themselves have an incentive to find an outlet for their milk located closer to their farms. When hauling costs on supply plant milk are covered under the order, however, neither buying nor selling handlers have an incentive to assure that the milk is not moved unnecessarily. Only when country plant milk is actually required to meet the market's fluid needs, therefore, whould the "pool" bear the expense of moving it to the city.

The Class II uses advocated by proponents as unavoidable should not be included in the set-aside allowance. Milk shake and frozen dessert mixes require the use of a significant amount of condensed or powdered ingredients while the cream requirements for those products and for cream products can be met by utilizing the surplus butterfat derived from standardization, which is included in the set-aside allowance. Arguments that transportation of yogurt as a packaged product and duplication of capital equipment are more costly than processing it in the city are persuasive although no testimony about rate or cost differences was introduced. Yogurt, however, is processed at relatively few distributing plants, and an allowance large enough to cover yogurt production at those plants would permit the application of transportation credit on excessive amounts of Class II use at distributing plants not processing yogurt. A further consideration is that if a handler achieves transportation and operational savings from processing Class II products in the city in great enough amounts to justify moving milk there from country plants, perhaps the handler rather than the market's producers should bear those hauling costs.

While it is important to ensure that country plant milk not be moved unnecessarily to city plants at the expense of the pool, it is appropriate for reasons of equity between handlers that use supply plant milk and those that use direct-delivered milk that all truly unavoidable Class II use at distributing plants be included in the set-aside allowance. City handlers should be indifferent as to where their milk is obtained, and raw product costs to competing handlers should be comparable. A handler reimbursing a supply plant operator for hauling milk needed for Class I but assigned to Class II pays more for his milk than a handler whose receipts are delivered directly from producers who are bearing the entire cost of transportation. A further inequity results when cooperatives operating supply plants subsidize the hauling of their members' milk to the city to avoid losing their outlets to competition from direct-delivered milk. The hauling subsidy must then be reblended in a lower payout to producers, disadvantaging cooperative members with respect to nonmember producers. An adequate allowance for unavoidable Class II utilization of not only direct-delivered receipts, but of supply plant receipts as well, in determining the applicability of location adjustments to supply plant milk is therefore important for achieving both handler and producer equity. The present set-aside allowance provides for unavoidable Class II use only at plants that have direct-delivered receipts. The allowance for unavoidable Class II use should be made applicable as well at a plant that receives milk from supply plants only.

When only genuinely unavoidable Class II uses are considered, the present set-aside allowances can be shown to be inadequate. Variations in inventory from one month to the next and an increase in the removal of butterfat from producer milk for standardization should be included in the set-aside allowance as unavoidable Class II use and considered in the determination of the application of transportation allowances to receipts from supply plants. Allowances for Class II use in shrinkage and route returns as presently provided for in the set-aside are adequate. Two percent of both skim milk and butterfat is generally considered a sufficient allowance for shrinkage, or receipts that are not accounted for in use, and the experience of the New England market as shown in the market administrator's statistical reports indicates that total shrinkage represents less than two percent of Class I utilization. Route returns represent intended Class I use that is returned to the handler by distributors. Such use is not identified specifically in statistical reports, but is usually included in livestock feed. Over the period represented by the statistical reports, use in livestock feed averaged 0.1 percent of Class I use, while the set-aside allowance for route returns is one percent.

Standardization, or the removal of butterfat from producer milk to achieve a lesser butterfat content for fluid use, is presently provided for in the set-aside allowance. The standardization allowance for butterfat, however, is not sufficient. According to the market statistics, the amount of butterfat that must be removed from producer milk for standardization is forty-one percent of the amount of butterfat in Class I dispositions. Skim milk that is removed with butterfat in standardization represents nearly two percent of the skim milk in class I.

Variation in ending inventory is not presently included in the set-aside allowance, but should be considered as an unavoidable Class II use. The volume of ending inventory may vary considerably, depending on whether the last day of the month occurs on a day of

the week on which the handler packages fluid milk products. Milk in inventory at the end of a month is not included in a distributing plant's Class I use on which location credits for the supply plant are determined. Not until the following month are fluid milk products in ending inventory during the prior month distributed on routes and included in Class I sales on which location adjustment credits apply. During the period of August 1979 through July 1980, for which pool statistics were submitted, the change in ending inventory from one month to the next for the market as a whole ranged from 0.04 percent to 5.7 percent of Class I use. An allowance of four percent of skim milk and butterfat in Class I use for inventory variation would cover the extent of that variation for eleven out of twelve months.

On the basis of data presented by the market administrator, a distributing plant primarily engaged in the processing of fluid milk products reasonably could have unavoidable Class II use in an amount up to ten percent of the skim milk and fifty percent of the butterfat contained in its Class I disposition.

No provision should be made for allowing an unused portion of a set-aside allowance at one plant to be used at another plant of the same handler. The witness for the dealers' association testified that inasmuch as some multi-plant handlers specialize in some Class II uses at certain plants, they should be entitled to share the set-aside allowances between all plants of a handler. Because the Class II products requested to be covered by the set-aside provision are not to be included, the potential benefits to the handler of this part of the dealers' proposal would be lost. Moreover, if the allowance adopted for unavoidable Class II use is more than is actually needed, it would detract from the intent of the limit on the allowance to accommodate pool transportation credit for supply plant milk intended for Class II product operations at another plant.

(b) *Classification of inventories.*

The provision for classifying fluid milk products in inventory at the end of each month should be changed to allow handlers more latitude in requesting that ending inventory be considered Class I. A handler who operates a pool distributing plant should be entitled to claim Class I classification on any or all inventories of fluid milk products at the end of each month, pending the final disposition of such fluid milk products. Also, the order should continue to provide that in the case of a handler who claims no Class II classification for any fluid milk product received, ending inventories of those fluid milk products should be classified as Class I, pending their final disposition.

At the present time, the inventory classification provision specifies that inventories of fluid milk products may be classified as Class I only if the handler who requests such classification receives no milk directly from producers or cooperatives, or if a handler claims no Class II classification of any fluid milk product received. Under this provision, supply plant milk received for fluid use but held in inventory at a distributing plant which also receives direct-shipped milk must be classified as Class II, and thus is not eligible for any transportation allowance. The cooperative federation and the dealers' association made identical proposals that the inventory classification provision be amended to allow a handler who receives milk directly from producers or from cooperative to request that fluid milk products in inventory at the end of the month be classified as Class I.

Witnesses testified that the present classification of inventory in Class II is responsible for large and frequent Class II classification of supply plant milk shipped to distributing plants. An ending inventory large enough to increase total Class II use over the amounts to be assigned under the set aside allowance may cause milk moved to a distributing plant for fluid use to be assigned to Class II. Proponents asserted that as the number of days in the week on which handlers bottle milk decreases, the occurrence of large fluid inventories becomes more frequent.

The classification of inventories also affects the amount of milk received from supply plants on which transportation credit is allowed. Milk transferred for fluid use but held in inventory and classified as Class II is not subject to transportation credit. Presently, large ending inventories expand the amount of Class II utilization to which receipts are assigned, increasing the likelihood that a handler will have greater Class II utilization than that provided for in the "set-aside" allowance. The receipts assigned to this excess Class II use caused by large ending inventories are supply plant receipts which are thereby denied the application of transportation allowances. The representative for the dealers' association testified that the ability of handlers to classify some ending inventory as Class I would enable them to level off assignments of milk to Class II from month to month. The proposal was described as a means for relieving the effects of large inventory variations on transportation credits for supply plant milk.

To a great extent, the problems addressed by this proposal have been remedied elsewhere in this decision. The Class II classification of supply plant milk will be curtailed by the transfer of milk between pool plants on an agreed class basis. Milk moved for fluid use will be reported as Class I and assigned to Class I before receipts of producer milk are assigned. However, under the revised "set-aside" provision, assignment of supply plant milk to Class I will not ensure transportation allowances on that milk. While the increased "set-aside" percentages include an allowance for inventory variation established on the basis of market-wide averages, it cannot be expected that each handler will operate within the "set-aside" allowance for inventory variation every month, or that all handlers will experience similar inventory variations. A handler with an unusual inventory variation should be allowed to place some or all of his ending inventory in Class I in order to even out the effect extreme variations in inventory may have on the applicability of transportation credits to his receipts.

In the first month in which inventory is classified as Class I, it may be expected to have a significant impact on the amount of skim milk and butterfat available for location adjustment. In subsequent months, however, continued classification of inventory in Class I would be offset by Class I beginning inventory assigned to Class I use and deducted before the amount available for location adjustment is determined. It is not expected that use of this provision will result in any detrimental effects on the pool. The ultimate classification of producer milk is determined by its final use. Classification in inventory is always subject to adjustment in the following month, depending on the handler's actual utilization in that month. The effective use of Class I classification of inventory, then, would be to correct for inventory variations greater than those allowed for in the "set-aside" provision. The primary impact of allowing inventory to be reported as Class I on a handler's use value is that the handler pays the Class I price for milk in the month previous to its use in that class. At present interest rates, the cost of unnecessarily classifying inventory in Class I would be as much as 5 cents per hundredweight.

At the time a handler reports receipts and utilization of milk products to the market administrator for a particular month, the use of milk in inventory at the end of the month would be known to the handler. The handler should therefore be able to designate the

classification of milk held in inventory on the last day of the month for use on the first day of the following month. Supply plant milk received for fluid use is more likely to be classified according to the use for which it was intended, and transportation credits are more likely to be allowed on such milk, if handlers are allowed more discretion in classifying inventory as Class I.

3. *Plant definition.* The order should be changed to provide that a facility at which milk is reloaded through stationary storage enroute from producers' farms to processing plants, but at which no processing or packaging takes place, may be designated by the handler as a non-pricing point upon written notice to the market administrator before the first day of the period in which such designation is to be effective. Designation as a non-pricing point may be changed to give the facility status as a pricing location under the same notification requirements. A proposal to allow stationary storage facilities to be non-pricing points on the premises of a manufacturing or processing plant should not be adopted.

The order presently describes a plant as premises on which milk or milk products are received, processed, or packaged. Milk received at a plant is priced at the location of that plant. Bulk reload points, where milk is reloaded from one tank truck to another en route from dairy farmers' farms to a plant, are specifically excluded from the plant definition unless stationary storage tanks are maintained and used on the premises. Milk reloaded at bulk reload points is priced at the location of the plant where it is later received. If stationary storage tanks are in use at the reload point, however, the reloaded milk is considered a receipt there and priced at that location.

Cooperative and dealer groups both proposed that the definition of a reload point be expanded to include stationary storage facilities. The dealers' association proposed that no prohibition on the use of a pipeline connecting a stationary storage tank with a manufacturing or processing plant be included. Both groups requested that a handler have the option of designating a reload point with stationary storage as a pricing point. Proponents contended that the inclusion of stationary storage at a reload point, or non-pricing point, would help alleviate the competitive equity problem of supply plant milk relative to direct-delivered milk by allowing milk that is presently considered a supply plant receipt to be accounted for as a direct delivery to a distributing plant.

The representative of the proponent federation of cooperatives testified that reloaded milk will continue to be an important part of the milk supply in New England, and that stationary storage is an important factor in handling that milk supply efficiently and economically and in maintaining its quality. He stated that is areas relatively close to the interstate highway system and city consumption centers, the structure of dairy farming is not conducive to the use of large tractor trailers. The topography in these areas in southern Vermont and New Hampshire is often hilly, with narrow winding roads and small bridges making the use of tractor trailers hazardous. He indicated that many farms are not set up to have their milk picked up by large over-the-road tankers, and the density of the farms is often not great enough to make the use of such vehicles economical. For these reasons, he noted, it is unlikely that the trend toward farm pickup by over-the-road tankers will advance much further. In some areas, milk will continue to be picked up at the farm in smaller assembly vehicles and reloaded into tractor trailers to be hauled to plants.

According to witnesses for cooperatives, the presence of stationary storage facilities at reload points would contribute to the maintenance of milk quality by enabling handlers to unload, wash and sanitize assembly vehicles immediately upon completion of their routes rather than waiting for the arrival of a delivery vehicle. Furthermore, they stated, milk temperature would be better maintained and poor quality milk segregated more easily through the use of stationary storage tanks.

Proponents of both cooperative and dealer proposals, as well as other cooperative representatives, testified that the use of stationary storage at reload points would promote hauling efficiency and economy. Storage tanks would provide a margin for short-time fluctuations between volumes of milk receipts and shipments at country plants, giving handlers more flexibility in directing deliveries of milk as needed on a daily basis and accommodating the prevailing trend toward reduced numbers of bottling days at distributing plants. It was asserted that if stationary storage facilities were available at reload points, gaps between assembly and delivery schedules would not require that trucks and drivers wait upon the completion of other routes. As a consequence, fewer assembly and delivery trucks may be required, resulting in savings in the costs of milk handling. Witnesses testified that unnecessary costs of 4 cents per hundredweight are presently incurred at ten to twelve locations where parked trailers are in use as "mobile" storage facilities. At some reload points the presence of stationary storage tanks which cannot be used without causing the location to become a pricing point represent a cost to handlers of unused capacity. No difficulties were foreseen in properly accounting for the disposition of producer milk reloaded through stationary storage facilities.

The proponent cooperative federation, although not originally proposing that a handler be allowed the option of designating a non-pricing reload point with stationary storage as a pricing point, modified their proposal during testimony to make such a choice available to a handler during any month of the year. The dealers' association had proposed that handlers be able to include such a facility as a "plant" in a group of plants during July through December in order to meet supply plant performance standards. The dealers' witness advocated the adoption of this option to enable a handler to meet qualifying shipments for his group of supply plants flexibly and efficiently. Cooperative witnesses pointed out that in the absence of their proposed option, a handler with no other plant may be unable otherwise to qualify his producers or his milk supply for pooling. Further, under an expanded reload point definition and without such an option, a plant at which processing has been taking place would lose its pricing status if its processing activities cease, potentially disrupting the pricing of producer milk received there. Witnesses from both groups testified that the market administrator should be notified in advance of a handler's intention to change the designation of his "reload point" to a "plant" or vice versa, so that milk handled there might be pooled, classified and priced properly. A cooperative witness suggested that it might be necessary for administrative reasons to limit a handler's use of the proposed option to certain months, or for the status of a reload facility with stationary storage to remain unchanged throughout the qualifying period.

The dealers' association proposal would allow a storage tank at a milk processing plant to be a non-pricing point, even if connected to the processing operation by a pipeline. The cooperative proposal would prohibit the connection by pipeline of non-pricing storage facilities with processing or packaging operations. The witness representing the milk dealers speculated that potential difficulties encountered by the market administrator in identifying a "pipeline" would make such a prohibition troublesome to administer. He stated that the use of a

manufacturing plant as a non-pricing point would increase a handler's flexibility in the assembly and transportation of milk. Furthermore, he contended, when the list of activities presently allowed at a reload point is considered, it is apparent that such a facility may already be considered a complex milk plant at which processing, as well as statonary storage, would be a logical extension of permissible activities. Cooperative witnesses argued that a facility receiving milk should be either a pricing point or a non-pricing point, and should not perform in both capacities on the same premises at the same time. It was pointed out that administrative difficulties in determining whether a producer's milk had been received at a pricing or a non-pricing point would no doubt result from a provision of this nature. Determining whether milk delivered to city distributing plants is received from supply plants or through reload points would also become more difficult. The proponent witness conceded the difficulty of accounting for milk received at and reloaded from stationary storage tanks at a processing plant.

The record indicates that allowing the use of stationary storage tanks at non-pricing reload points will contribute to the marketing of milk in a more efficient and economic manner. It is apparent that handlers are incurring expenses of maintaining extra tank truck trailers for storage purposes which are operationally inefficient in order to circumvent the provision of the order that requires milk to be priced at a reload point if the milk is held in a stationary storage tank. The problem of whether the cost of hauling plant milk which is assigned to Class II will be paid by the buyer or the seller is currently avoided by reloading milk from mobile storage tanks and causing it to be priced as direct-delivered milk instead of plant milk. Convincing arguments were presented that significant efficiencies other than saving the expense of operating mobile storage facilities may be made in the operations of handlers assembling and delivering milk if stationary storage is permitted at reload points. If assembly and delivery trucks no longer need wait on each other and are free to complete more routes, both capital and labor savings may be accomplished through the need for reduced numbers of trucks and drivers. Idle storage facilities may be put into use without making a location a pricing point, freeing the trailers now being used as mobile storage for the transportation of milk. A facility that receives milk should remain within the definition of a plant. However, if no processing or packaging occurs on the premises of the plant during the same month in which milk is received and held there in stationary storage tanks to be reloaded and moved to other plants, the facility may be designated a non-pricing reload point by the handler.

Milk delivered to a facility and held in stationary storage on premises where processing or packaging is performed should be priced at that location. Allowing a handler to designate one portion of a manufacturing plant as a non-pricing point would result in insurmountable problems in determining whether producer milk received into stationary storage had been commingled with plant milk, and whether milk "reloaded" from there was producer milk or plant milk. The problem of defining a "pipeline" will be avoided by prohibiting the processing and packaging of milk on the same premises as a non-pricing point. The addition of stationary storage to those activities presently permitted on the premises of a reload point will not afford any increased ability to alter the characteristics of producer milk. If processing or packaging activities are present, however, maintaining the identity of producer milk would become a problem.

Some handlers may find it necessary to retain plant status for a reload facility with stationary storage during some months of the year in order to qualify individual producers, or their entire milk supply, for pooling. When plant status is not required for pooling, however, those handlers should be allowed to exercise the same option available to other handlers of designating their facilities as non-pricing points. There is no need to require a handler to maintain either pricing or non-pricing status for such a facility throughout an entire year, and that requirement would be unnecessarily restrictive. Furthermore, a plant at which no processing or packaging occurs need not maintain the same pricing status for the entire August through December period during which supply plants must make minimum shipments if they want to be automatically pooled in later months. Supply plant performance is determined each month for both individual plants and groups of plants. There is no basis for requiring any plant to be eligible to meet those standards for the entire period, or for prohibiting the plant from performing as a pool supply plant only for those months needed for qualifying producers for diversion.

The market administrator should be notified in writing of the designation of a reload point with stationary storage facilities as a non-pricing point, or the reversal of such designation before the first day of the month for which the pricing status is to be changed. Sufficient notification will ensure that producer milk received or reloaded there will be pooled, classified and priced properly. In addition, the status of the plant will be determined in time for handlers purchasing milk from or through that location to be aware of the manner in which the order will be applied to those receipts.

4. *Diversion of producer milk.*

Limits on the proportion of producer milk that may be diverted to nonpool plants and still be eligible for pooling should be increased to more nearly reflect the percentage of milk on the market that is in excess of the market's fluid needs. A handler's diversions of producer milk to nonpool plants should be limited to 35 percent of milk pooled in the months of September through November and 45 percent in the other months of the year instead of the present limit of 25 percent in each month. This modification should enable handlers to avoid uneconomic handling of milk that may currently be undertaken to qualify all of a handler's milk supply for pooling.

A spokesman for the cooperative proposing that the 25 percent limit on diversions of producer milk to nonpool plants be deleted testified that such a limit restricts only the method used to move milk to nonpool plants, and not the amount of milk. In addition, he pointed out that the present requirements for delivery of producer milk to pool plants are much more rigorous year-round than shipping standards for pool supply plants. The witness stated that his organization incurs substantial freight costs in addition to costs of 10–12 cents per hundredweight solely to move milk through its supply plants for the purpose of qualifying it for pooling, a procedure which is not only expensive but fuel-inefficient. A handler who sells a substantial portion of Class II milk to nonpool plants, he claimed, bears an undue and unfair burden of marketing costs in these unnecessary movements of milk. The witness further testified that the order provisions for individual producer qualifications assure that producers are adequately associated with the market, describing as stringent a requirement that a majority of shipments of a producer's milk be delivered to a pool plant for at least 2 months of a qualifying period. He stated that the diversion limit does nothing to ensure the adequate attachment of

producers to the pool, and thereby preclude dilution of the pool. A final point made by this witness was that the Class I needs of the order currently are not only being met, but are declining; and that in a market with only 50 percent Class I use, a 75 percent delivery requirement is excessive.

A witness representing most of the cooperatives on the market testified in opposition to the elimination of limits on diversions of producer milk to nonpool plants. He asserted that deleting the diversion limit would allow supplies of milk that are not really associated with the fluid market to share in the Class I pooling base, thereby reducing the uniform price to producers who are serving the Class I market. Since the diversion limit discourages pool riding by irresponsible parties who would be able regularly to divert milk to locations remote from the market, this witness expressed his conviction that milk would be available for Class I use whenever necessary only if the limit is retained. He pointed out that there are numerous pool manufacturing plants to which milk can be diverted and still qualify for pooling.

The proponent's witness testified only generally about the extra costs resulting from unnecessarily hauling, receiving, and shipping milk for qualifying purposes, and did not indicate the extent to which such inefficient handling of milk is required of his organization. Cooperatives operating pool manufacturing plants are likely to experience few difficulties in pooling their milk within the diversion limits. Cooperatives without such outlets, however, may indeed operate at a disadvantage in meeting pool delivery requirements even if the actual utilization of their milk differs little from that of producer groups possessing pool manufacturing facilities.

In the absence of any testimony regarding the magnitude of the proponent's need for relief from the inefficiencies caused by operating within the present diversion limits, the only evidence available upon which to base a determination of an appropriate level for such limits is the extent to which producer milk is needed for fluid use on a marketwide average. The percentage of producer milk assigned to Class I use over the course of one year is contained in the monthly statistical reports for August 1979 through July 1980 submitted by the market administrator. These reports show a range in percent of Class I utilization of producer milk of 47 percent to 63 percent during that period, with an average of 56 percent. Since over half of the milk pooled in New England is needed for fluid use, some limit on the proportion that may be diverted to nonpool plants for manufacturing should be retained to ensure that groups of producers whose milk is to be pooled will maintain a regular association with the fluid milk market. A requirement that 75 percent of producer milk be delivered to pool plants when less than 65 percent in any month will be used in Class I, however, would appear to be overly restrictive.

The months in which the highest proportion of producer milk is used in Class I are the fall and winter months, including September through November when supply plant performance standards are highest. With a Class I utilization percentage that is slightly less than 65 percent in those months, a limit of 35 percent on diversions of producer milk to nonpool plants should ensure an adequate supply for fluid needs. For other months, in which the percent of Class I use averaged slightly less than 55 percent during the period for which statistics were submitted, a 45 percent limit on diversions ought to be sufficient to meet the market's need for fluid milk. Increased diversion allowances will better reflect the proportion of producer milk that is surplus to fluid needs and should alleviate, if not eliminate, the necessity of unnecessary hauling and handling for purposes of qualifying reserve milk supplies for pooling.

The federation of cooperatives which presented testimony in opposition to the proposed deletion of diversion limits filed an exception to the increased diversion allowances adopted in the recommended decision. They suggested that instead of changing allowable diversions to 35 percent for September through November and 45 percent for the rest of the year, they would support diversion limits of 30 percent in September through November and 40 percent in December through August. The cooperatives expressed concern that milk supplies located in western New York, western Pennsylvania or Ohio which historically have not been associated with the New England market would be attracted to the market and would share in the New England pool if diversion allowances are increased. There is no evidence that milk supplies from so far away would be attracted to the New England market. The increased plant location adjustment rate adopted in this decision would reduce the blended price at distant plant locations. Thus, the New England blended price can be expected to become less competitive in distant areas such as western New York and thus not likely to encourage the association of these distant milk supplies with the New England market.

This group of cooperatives also objected to the amount of the recommended increased diversion allowances on the basis that much of the Class II milk is handled by or could be diverted to pool manufacturing plants. Also, they claimed, some of the milk assigned to Class II which was used to determine an appropriate level of allowable diversions is milk received at pool plants for fluid use which ends up in unavoidable Class II uses such as shrinkage, cream from standardization, and route returns.

If producer groups which do not own pool manufacturing plants are to have an opportunity to handle reserve milk as efficiently as possible by moving it directly to the nearest manufacturing plant, it is necessary that diversion limits be relaxed. The existence of pool manufacturing plants should not be a basis for narrowly limiting the amount of milk which may be diverted to nonpool manufacturing plants, since it would continue to encourage inefficient milk handling by producer groups that use nonpool manufacturing plant outlets.

With respect to the determination of allowable diversion percentages on the basis of marketwide Class II use, it is not intended that a handler who diverts milk have Class I usage of not less than the marketwide average. Rather the diversion limit is intended to encourage market participants to make their milk supplies available for fluid use and also to accommodate the efficient disposal of reserve milk supplies. In this regard, a market participant that moves 65 percent of its milk supply to pool plants during the short production months and 55 percent in any other month has demonstrated an association with the market to an extent that warrants the pooling of all of its milk supply.

5. *Butterfat accounting.*

Three related proposals to change provisions relating to butterfat sampling and testing methods, shrinkage allowances and overage accounting should not be adopted.

One proposal, as written, would decrease the amount of time allowed a handler after the end of each sampling period to notify producers of their average butterfat tests as determined under certain testing procedures. Additionally, the proposed amendment would create contradictory requirements within the order for the time allowed to notify producers of some test results. The proponent's representative indicated in testimony, however, that the intent of this proposal

is to establish the state or commonwealth in which the milk is received as the authority for determining whether sampling and testing methods used by the handler are acceptable. The market administrator or his representative would not be prohibited from doing independent testing and would continue to notify producers and handlers of the results of such testing. However, the witness specified that the market administrator would not be allowed to interfere with the normal and reasonable sampling and testing operations of a hauler or handler's representative.

No testimony was presented to indicate that the market administrator presently interferes, or has ever interfered, with a hauler's or handler's testing operations or that any of the procedures followed by the market administrator in the performance of his verification duties are contrary to the methods approved by the states or commonwealths having jurisdiction in the marketing area. In addition, a witness representing most of the cooperative associations in the market testified that his organization would experience difficulties in meeting the proposed notification requirements, both in amount of time allowed after the end of the testing period (7 days instead of 10) and in frequency of notification (3 times per month instead of 2 because the use of the random fresh sampling technique results in 3 10-day sampling periods).

In view of the difficulties which adoption of this proposal would create for handlers and because no need was shown for further specifying the authority having jurisdiction over sampling and testing procedures, the proposal should not be adopted.

Another amendment proposed by the same handler would increase the Class II shrinkage allowance from 2 percent to 3 percent for butterfat receipts established on the basis of 4 or fewer samples during the month. Witnesses for the proponent testified that a combination of sampling problems makes it difficult to obtain accurate representative samples from either farm bulk tanks or over-the-road tankers when the methods used are those which are commonly practiced in the dairy industry.

Some evidence was presented that farm tests exhibit a bias in favor of the producer, overstating the butterfat for which a handler must account and resulting in excess butterfat shrinkage. Witnesses agreed that when more samples are used to determine butterfat content a more accurate test should be expected, but concerns over the administrative difficulties involved in keeping separate records for those receipts having been tested 4 or fewer times from those tested more than 4 times were expressed by two representatives of producer groups. One witness further commented that this proposal would result in differing butterfat shrinkage allowances to handlers depending on their testing procedures, protesting that such unequal treatment would not be permissible under the Act.

No evidence supporting the necessity for an increase in the allowance for Class II butterfat shrinkage was introduced. In fact, witnesses for the proponent testified that equipment that can sharply reduce sampling error and thereby eliminate one of the primary causes of butterfat shrinkage is currently available at a reasonable cost. An examination of the statistics in the record shows that total butterfat shrinkage as a percentage of producer butterfat averaged just over 1 percent during the period August 1979–July 1980. During none of these months did the percentage of shrinkage exceed 1.47 percent for the market as a whole. During each month some handlers apparently exceeded their shrinkage allowances since some Class I butterfat shrinkage appeared in each month, in amounts which averaged only 0.21 percent of butterfat in producer milk per month. Class I butterfat shrinkage ranged from 0.09 percent to 0.42 percent during August 1979–July 1980, never approaching the 1 percent additional allowance that the proponent requested. It would appear from these data that while some milk handlers may experience difficulty operating within the Class II butterfat shrinkage allowance provided by the order, others are able to do so while using little more than half of that allowance. When combined with the aspects of this proposal that would make its administration difficult and its impact on handlers inequitable, the failure to demonstrate its necessity makes it apparent that the proposal should be denied.

The third proposal regarding butterfat accounting would result in no charge being imposed on a handler who experiences an amount of butterfat overage which can be offset by skim milk shrinkage in the same month. The proposal limits the amount of offset not subject to charge to one percent of butterfat in milk handled during the month and the occurrence of such an offset to once every quarter in a year. The witness for the proponent testified that a handler's butterfat overages are often due to inaccurate sampling of producer milk and therefore the handler should not be charged for butterfat used in excess of butterfat received.

A provision of this sort would reflect the concept that there could be no actual butterfat overage if there were no overuse of total product. As an opponent of the proposal pointed out, however, an overage represents milk (or butterfat) which has been used by the handler but for which the producer has not been paid. A butterfat overage occurring with a skim shrinkage may be the result of sampling, testing or accounting errors in areas of a handler's operation other than receipts of producer milk. Such a provision, then, would eliminate the means by which producers are paid for receipts unreported by handlers.

With regard to exempting butterfat overages from a charge only once per quarter, while it is true that the situation for which the proposal was designed should occur infrequently, it should also occur randomly if due to no systematic error. Truly random occurrences would be just as likely in consecutive months as once per quarter, and no such restriction could be placed upon them. Frequent occurrence, however, would indicate that some constant problem exists in sampling, testing or accounting for milk received and used. One opponent of the proposal stated that such a provision would remove a handler's incentive to try to rectify accounting problems that lead to overage and excess shrinkage by removing the penalties associated with those problems.

As in the case of the other proposals related to butterfat accounting, neither need for nor benefit from any change in the current provisions was demonstrated by the proponents. No evidence was presented to show that existing allowances are inadequate. Instead, the only evidence available indicates that the experience of milk handlers falls well within the present allowances.

6. *Proposals not supported.* Two proposals by the milk dealers' association which were included in the notice of hearing, but not supported in testimony, should be denied. One of these proposals would reduce supply plant shipping requirements 10 percentage points per month for the period August through December and allow diverted milk to be included as qualifying shipments. A representative of the cooperative federation testified on behalf of the federation that changes made in shipping standards by a December 1978 order amendment had alleviated sufficiently earlier problems

in meeting those requirements. The witness testified that while there may be isolated instances of handlers unable to maintain the present shipping standards, such occurrences were temporary and probably the result of recent abnormal producer shifts. Supply plant shipping standards in New England were characterized as modest when compared with those in other orders. A significant reduction in shipping requirements, it was feared, would lead to unneeded supplies of milk becoming attached to and pooled in New England, resulting in an adverse impact on producer blend prices.

The other proposal which was not supported by testimony was an alternative to the proposals to increase location adjustment rates and to adjust those rates automatically by a formula. This proposal would add a new section to the order in which supply plants would, in addition to current transportation allowances on milk assigned to Class I, be allowed an additional 8-cent credit for receiving and reloading costs and an additional one-half cent per hundredweight for each zone difference in location between the supply and distributing plants. The rate per hundredweight for each zone distant from Zone 1 would be adjusted by .05 cents for each 5-cent change in diesel fuel prices. A proprietary handler stated his intention to testify against this proposal if any testimony was received in favor of it.

Given the absence of testimony supporting either of these proposals, the failure to establish a need for revising supply plant performance standards, and the adoption of part of the proposal to increase transportation allowances elsewhere in this decision, there is no reason to adopt either of these proposals.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a MARKETING AGREEMENT regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the New England marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

August 1981 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New England marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on November 5, 1981.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order[1] Amending the Order, Regulating the Handling of Milk in the New England Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New England marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.),* and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the New England marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Acting Administrator, on August 28, 1981, and published in the **Federal Register** on September 2, 1981 (46 FR 43980), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein:

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. In § 1001.4 paragraph (b) is revised to read as follows:

§ 1001.4 Plant.

* * * * *

(b) Bulk reload points (separate premises used for the purpose of transferring bulk milk from one tank truck to another tank truck while en route from dairy farmers' farms to a plant). If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility be treated as a reload point; otherwise it shall be a plant. The cooling of milk, collection or testing of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

2. In § 1001.15 paragraph (c) is revised to read as follows:

§ 1001.15 Diverted milk.

* * * * *

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to nonpool plants in excess of 35 percent in the months of September through November and 45 percent in other months, of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. If the handler fails to designate the dairy farmers whose milk is to be so excluded, the entire quantity of milk that the handler caused to be moved from dairy farmers' farms directly to nonpool plants during the month shall be excluded from producer milk.

3. Section 1001.41 is revised to read as follows:

§ 1001.41 Classification of inventories.

(a) A handler who operates a pool distributing plant may claim a Class I classification of some or all inventories of fluid milk products at the end of each month pending final disposition of such fluid milk products.

(b) If a handler does not claim a Class II classification of any fluid milk products received, inventories of fluid milk products at the end of each month shall be classified as Class I milk pending final disposition of such fluid milk products.

4. In § 1001.47 paragraphs (a), (b) and (c) are revised to read as follows:

§ 1001.47 Additional assignments to Class I and Class II milk.

(a) Assign to Class I milk bulk fluid milk products received from other pool plants, unless Class II utilization was requested by the transferee and transferor handlers.

(b) Assign to Class I milk the receipts of producer milk that have not been previously assigned pursuant to § 1001.43(d) and receipts of milk from cooperative associations in their capacity as handlers under § 1001.9(d).

(c) Assign to Class I milk the bulk fluid milk products received from other pool plants that have not been previously assigned.

* * * * *

§ 1001.50 [Amended]

5. In § 1001.50(a), the amount "$2.42" is changed to "$2.28".

6. In § 1001.52, paragraph (a) is revised, paragraphs (b), (c) and (d) are removed, and paragraph (g) is revised, as follows:

§ 1001.52 Plant location adjustments.

* * * * *

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the State of Rhode Island and the Massachusetts counties of Barnstable, Bristol, Dukes, Norfolk, Plymouth and Suffolk, and between Boston and Massachusetts highway route number 128.

(2) Zone 2 shall include the Massachusetts counties of Middlesex (only that portion south of Massachusetts highway route number 2 not included in Zone 1) and Worcester (only the townships of Berlin, Blackstone, Bolton, Douglas, Hopedale, Mendon, Milford, Millville, Northborough, Northbridge, Southborough, Sutton, Upton, Uxbridge, Westborough and that portion of Harvard township south of Massachusetts highway route number 2).

(3) Zone 3 shall include:

(i) The Connecticut counties of Middlesex (except the townships of Cromwell, Durham, Haddam, Middlefield, Middletown, and Portland), New London, Tolland (except the townships of Ellington and Somers), and Windham.

(ii) The Massachusetts county of Worcester (only the townships of Auburn, Boylston, Charlton, Clinton, Dudley, Crafton, Holden, Lancaster, Leicester, Millbury, Oxford, Paxton, Shrewsbury, Southbridge, Sterling, Webster, West Boylston, and Worcester City).

(4) Zone 5 shall include:

(i) The Connecticut counties of Fairfield, Hartford, Litchfield, Middlesex (only the townships of Cromwell, Durham, Haddam, Middlefield, Middletown and Portland), New Haven, and Tolland (only the townships of Ellington and Somers).

(ii) The Massachusetts counties of Hampden (only the townships of Brimfield, Holland, Monson, Palmer and Wales), Hampshire (only the township of Ware), and Worcester (only the townships of Brookfield, East Brookfield, Hardwick, New Braintree, North Brookfield, Oakham, Spencer, Sturbridge and West Brookfield).

(5) Zone 6 shall include the Massachusetts counties of Hampden (except the townships of Brimfield, Holland, Monson, Palmer and Wales), and Hampshire (except the township of Ware).

(b)–(d) [Reserved]

* * * * *

(g) The location adjustments for each plant shall be the amounts shown in the following table for the zone in which the plant is located:

LOCATION ADJUSTMENTS FOR DETERMINATION OF ZONE PRICE

Distance to Boston (miles)	Plant location zone	Class I and blended price adjustments (cents per hundredweight)
1 to 10	1	+72.0
11 to 20	2	+69.5
21 to 30	3	+67.0
31 to 40	4	+64.5
41 to 50	5	+62.0
51 to 60	6	+59.5
61 to 70	7	+57.0
71 to 80	8	+54.5
81 to 90	9	+52.0
91 to 100	10	+49.5
101 to 110	11	+47.0
111 to 120	12	+44.5
121 to 130	13	+42.0
131 to 140	14	+39.5
141 to 150	15	+15.0
151 to 160	16	+12.5
161 to 170	17	+10.0
171 to 180	18	+7.5
181 to 190	19	+5.0
191 to 200	20	+2.5
201 to 210	21	+0.0
211 to 220	22	−2.5
221 to 230	23	−5.0
231 to 240	24	−7.5
241 to 250	25	−10.0
251 and over	[2] 26	[1]

[1] Class I and blended price location adjustments applicable to plants located in subsequent zones shall be obtained by extending the table at the rate of 2.5 cents for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month.

[2] Includes 26 and over.

7. In § 1001.53, the word "and" at the end of paragraph (f) is removed, the period at the end of paragraph (g) is changed to a semicolon followed by the word "and", and a new paragraph (h) is added to read as follows:

§ 1001.53 Determination of applicable zone locations for pricing purposes.

* * * * *

(h) For purposes of computing the value of fluid milk products at class prices, any fluid milk products moved in bulk from a pool plant to another pool plant at which a higher Class I price applies and which is classified as Class I milk shall be priced at the Class I price applicable at the location of the plant to which the milk was moved subject to a location adjustment credit for the transferee-plant determined by the market administrator as follows:

(1) After the assignments pursuant to § 1001.46 for the transferee-plant, multiply the remaining pounds of Class I skim milk by 110 percent and the remaining pounds of Class I butterfat by 150 percent;

(2) Subtract the respective pounds of skim milk and butterfat in bulk fluid milk products physically received at the plant from the following sources:

(i) Producers;

(ii) Cooperative associations in their capacity as handlers under § 1001.9(d);

(iii) Receipts of diverted milk from pool plants; and

(iv) Receipts (other than diverted milk) from pool plants at which the same or a higher Class I price applies;

(3) Assign any pounds remaining (which are not in excess of Class I transfers) to skim milk and butterfat in bulk receipts of fluid milk products (except diverted milk) from other pool plants at which a lower Class I price applies in sequence according to the zone location of the plants, beginning with the plant in the lowest numbered zone; and

(4) Mutiply the hundredweight computed for each transferor-plant in paragraph (h)(3) of this section by the difference in the Class I prices applicable at the transferee-plant and transferor-plant and total such amounts.

8. In § 1001.60 paragraphs (a) (1) and (3), and (i) are revised to read as follows:

§ 1001.60 Computation of value of fluid milk products at class prices.

* * * * *

(a) * * *

(1) Producer milk assigned under §§ 1001.43(d) and 1001.47(b) except that for any cooperative association in its capacity as a handler under § 1001.9(d) the quantity of producer milk shall be reduced by the total quantity of milk moved to pool plants during the month, to the limit of the quantity of producer milk;

(2) * * *

(3) Milk received at a pool plant from a cooperative association in its capacity as a handler under § 1001.9(d) and assigned under § 1001.47(b).

* * * * *

(i) Add together the amounts obtained under paragraphs (a) through (d) of this section, subtract therefore the sum of the amounts obtained under paragraphs (e) through (h) of this section, and subtract the amount of the location adjustment credit computed pursuant to § 1001.53(h).

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